IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6769 OF 2005

Manik Chandulala Borana : Petitioner
(Orig. Appellant)

V/s.

Shree Adinath Co-op. Hsg.Society & Ors. : Respondents
(Orig. Respondents)

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Mr.M.C.Lokesh with Mr.G.S.Hegade and Mr.Deepak Girme for the petitioner.

Mr.Gajanan Savagave with Mr.Rakesh M. Pandey for the respondent no.3.

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CORAM : S.A. BOBDE, J.

October 18, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Savagave for the respondent no.3 appears and waives service of rule.

Heard by consent.

2. The petitioner has challenged the judgement and order dated 30.6.2005 passed by the Maharashtra State

Co-operative Appellate Court directing the petitioner to hand over vacant possession of flat no.R-346 within six months to the respondents from the date of the order. The learned counsel for the petitioner contended that the Co-operative Court did not have any jurisdiction since the petitioner was a tenant. Both the Courts have concurrently found as a fact that the petitioner is not a tenant. The Co-operative Appellate Court has observed as follows:-

> "Though it is contended by opponent that he is a tenant, opponent had not laid (sic) any evidence in support of this contention showing that he is a tenant, he had not produced decree of the civil court declaring him as a tenant of suit premises. Hence bare contention of the opponent that he is a tenant cannot be accepted."

In fact, the Co-operative Appellate Court has accepted the respondents' case that the petitioner was given the flat in question initially as a licensee for sometime after which, in spite of the termination of the licence, he carried on in possession and was, therefore, a rank trespasser. The Co-operative Court has, inter alia,

relied on the decision of the Supreme Court in O.N. Bhatnagar v. Smt. Rukibai Narsindas & ors. (1982 (2) Bom.C.R. 401) wherein the Supreme Court held that a claim of a society for ejectment of a person who was permitted to occupy, upon revocation of licence is a dispute falling within the purview of section 91(1) of the Act.

3. In this view of the matter, there is no merit in the petition which is hereby dismissed. Time to vacate granted by the appellate Court is extended by a period of three months on the petitioner's submitting an undertaking in the usual terms within three weeks from today that he shall not induct any third party and shall vacate the premises at the end of the extended period of three months. If the petitioner fails to file such an undertaking within three weeks from today, the respondents shall be at liberty to execute the award.

4. The rule stands discharged.

S.A. BOBDE, J.